

CITY OF KNOXVILLE, TENNESSEE

City Council

AGENDA INFORMATION SHEET

AGENDA DATE: September 25, 2018

DEPARTMENT: Administration

DIRECTOR: David Brace

AGENDA SUMMARY A Resolution authorizing the Mayor to enter into an agreement with Benefield Richters Company, Inc. to evaluate the existing Tennova St. Mary's facilities located at 900 East Oak Hill Avenue to determine its suitability for use as the future location of the City's Safety Complex Campus, which will house the Knoxville Fire Department, Knoxville Police Department and City courts, for an amount not to exceed \$50,000.00.

COUNCIL DISTRICT(S) AFFECTED

All

BACKGROUND

The City of Knoxville's current facilities housing the Knoxville Police Department, Knoxville Fire Department and City Court are inefficient and antiquated and the City has funded in its capital budget \$40M for the design and construction of a new, modern and efficient safety complex campus.

Benefield Richters architecture and planning firm is being hired on a limited basis via a contract for professional services to assist the City with a preliminary assessment of the opportunity of utilizing the Tennova (former St. Mary's) campus for use as a headquarters for the Knoxville Police Department, Fire Department and Municipal Court operations. The firm is being hired due to its experience in facility assessment, planning, knowledge of City operations and organizational structure and ability to mobilize quickly for this project.

Benefield Richters will not be designing the new KPD/KFD/Court facilities. The City is still several months away from securing the owner's representative and overall, multi-disciplinary design team that will provide all professional engineering and design services for the \$40M KPD/KFD/Court project. All work provided by Benefield Richters will be transferred to and benefit the larger design team and project once in place.

OPTIONS

Approve the Resolution

Deny the Resolution

RECOMMENDATION

Approve the resolution

ESTIMATED PROJECT SCHEDULE

Services to be provided primarily from September 2018 through January of 2019

PRIOR ACTION/REVIEW

N/A

FISCAL INFORMATION

This is a not to exceed contract for up to \$50,000.

ATTACHMENTS:

- Resolution - Tennova St. Mary's Facilities - Evaluation for Safety Complex Campus (DOC)
- C-19-0057 Benefield Richter Safety Complex Campus - FINAL (DOCX)
- Tennova St. Marys-MAP - Exhibit A (PDF)
- Benefield Richters Proposed Scope of Services - Exhibit B (DOC)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Mark Campen, Fifth District
SECONDER:	Finbarr Saunders, Vice-Mayor, At-Large Seat C
AYES:	Campen, McKenzie, Rider, Roberto, Saunders, Singh, Stair, Wallace, Welch

RESOLUTION

A RESOLUTION OF THE COUNCIL OF THE CITY OF KNOXVILLE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BENEFIELD RICHTERS COMPANY, INC. TO EVALUATE THE EXISTING TENNOVA ST. MARY'S FACILITIES LOCATED AT 900 EAST OAK HILL AVENUE TO DETERMINE ITS SUITABILITY FOR USE AS THE FUTURE LOCATION OF THE CITY'S SAFETY COMPLEX CAMPUS, WHICH WILL HOUSE THE KNOXVILLE FIRE DEPARTMENT, KNOXVILLE POLICE DEPARTMENT AND CITY COURTS, FOR AN AMOUNT NOT TO EXCEED \$50,000.00.

RESOLUTION NO: R-341-2018REQUESTED BY: AdministrationPREPARED BY: LawAPPROVED: 9-25-2018APPROVED AS AN EMERGENCY
MEASURE: _____MINUTE BOOK: 82 PAGE _____

WHEREAS, the City is interested in evaluating the existing Tennova St. Mary's facilities (hereinafter "Facilities"), located in the vicinity of 900 East Oak Hill Avenue, Knoxville, Tennessee 37917, to determine its suitability for use as the future location of the City's Safety Complex Campus, which will house the Knoxville Fire Department, Knoxville Police Department and City Courts; and

WHEREAS, in order to determine whether these Facilities will meet the City's needs, the site will need to be analyzed and data will need to be gathered to determine the condition of the existing facilities, whether there are any concerns with regard to infrastructure, and what any project costs may be should the City chose to acquire the property and develop the Facilities into the City's Safety Complex Campus; and

WHEREAS, the City desires to enter into an Agreement with Benefield Richters for the provision of these professional services; and

WHEREAS, the amount of this contract shall not exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00); and

WHEREAS, the City and Benefield Richters desire to set forth the terms and conditions agreed upon with respect to evaluating the Facilities to determine its suitability for use as the future location of the City's Safety Complex Campus.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KNOXVILLE:

SECTION 1: That the Mayor of the City of Knoxville be and hereby is authorized to execute an Agreement, in substantially the same form as the Agreement attached hereto, on behalf of the City of Knoxville, with Benefield Richters for the evaluation of the existing Tennova St. Mary's facilities located in the vicinity of 900 East Oak Hill Avenue, Knoxville, Tennessee 37917 to determine its suitability for use as the future location of the City's Safety Complex, which will house the Knoxville Fire Department, Knoxville Police Department and City Courts for an amount not to exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00).

SECTION 2: This Resolution shall take effect from and after its passage, the welfare of the City requiring it.

Presiding Officer of the Council

Recorder

ALYSON A. DYER
Attorney
City of Knoxville

Document No. C-19-0057

AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2018 (“Effective Date”) by and between the **CITY OF KNOXVILLE**, a municipal corporation organized and existing under the laws of the State of Tennessee, 400 Main Avenue, P.O. Box 1631, Knoxville, Tennessee 37901 (“**CITY**”), and **BENEFIELD RICHTERS COMPANY, INC.**, 516 Union Avenue, Knoxville, Tennessee 37902 (“**BENEFIELD RICHTERS**”).

WITNESSETH:

WHEREAS, the City is interested in evaluating the existing Tennova St. Mary’s facilities (hereinafter “Facilities”) located in the vicinity of 900 East Oak Hill Avenue, Knoxville, Tennessee 37917, as more particularly set forth in Exhibit A, (hereinafter “the Property”) to determine its suitability for use as the future location of the City’s Safety Complex Campus, which will house the Knoxville Fire Department, Knoxville Police Department and City Courts; and

WHEREAS, in order to determine whether these Facilities will meet the City’s needs, the site will need to be analyzed and data will need to be gathered so as to determine the condition of the existing facilities, whether there are any concerns with regard to infrastructure, and what any project costs may be if the City chose to acquire the Property and develop the Facilities into the City’s Safety Complex Campus; and

WHEREAS, the City desires to enter into an Agreement with Benefield Richters for the provision of these professional services; and

WHEREAS, the amount of this contract shall not exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00); and

NOW, THEREFORE, the City and Benefield Richters, for the mutual considerations stated herein, agree as follows:

**ARTICLE 1.
STATEMENT OF SERVICES**

- 1.1 SCOPE OF SERVICES. Benefield Richters agrees to evaluate the existing Tennova St. Mary's facility for the purpose of helping the City of Knoxville determine if the facility meets the needs of the City with regard to relocating the City's Fire Department, Police Department and City Courts. This evaluation will be done in four phases: (1) Site Analysis and Data Gathering, (2) Programming, (3) Testing, and (4) Opinion of Probable Cost. Benefield Richters agrees to perform and complete all services required herein in strict compliance with the highest professional standards and the terms of this Agreement. The executed Contract Documents will consist of: (1) this Agreement, (2) Exhibit A – Map of Tennova St. Mary's Facilities, and (3) Exhibit B - Proposal dated August 24, 2018 (excluding the first paragraph set forth in the "reimbursable expenses" section, which the parties have agreed is not part of this Agreement. To the extent there is a conflict between the terms of any of the Contract Documents that constitute this Agreement, the terms that provide the greater benefit to the City and/or impose the greater obligation on Benefield Richters shall control.
- 1.2 MATERIALS PROPERTY OF CITY. All services performed by Benefield Richters under this Agreement shall be considered work made for hire and any materials created shall be the property of the City. The City shall own any and all data, documents, plans, copyrights, working papers, notes, designs, drawings, specifications, technical data reports, and other materials produced in connection with this Agreement. Benefield Richters hereby assigns to the City all right, title and interest in and to such materials, although Benefield Richters shall be entitled to retain duplicates or copies of all such materials for its files and reference. At the City's request, Benefield Richters shall make interim deliveries of work product to the City that are necessary to complete related tasks. Any such request from the City will not be contingent on prior payment of all funds due Benefield Richters.
- 1.3 DELIVERABLES. Benefield Richters understands that time is of the essence, and Benefield Richters agrees to submit the information gathered during the initial phase (Site Analysis and Data Gathering) within thirty (30) days of the Effective Date of this Agreement, with the remaining phases to be completed no later than ninety (90) days from the Effective Date of this Agreement. Benefield Richters understands and agrees that its failure to comply with this Project schedule may result in termination of this Agreement.

**ARTICLE 2.
BASIC AGREEMENTS.**

- 2.1 TERM. Unless terminated earlier as provided herein, this Agreement shall be effective upon the Effective Date and shall remain in effect for a period of ninety (90) days. The expiration date of this Agreement may be extended by written mutual consent of the parties hereto.
- 2.2 CONSIDERATION. For the satisfactory performance of the work performed pursuant to the proposal attached as Exhibit A, in accordance with the provisions of this Agreement, the City will pay Benefield Richters a total contract price not to exceed FIFTY THOUSAND AND NO/DOLLARS (\$50,000.00) for the services set forth in this Agreement, unless this Agreement is modified by a Contract Change Order. Upon completion of each Phase, Benefield Richters shall submit an invoice for the services rendered to the City during that Phase of the Project. The invoice shall be in a form approved by the City, shall indicate the time period during which the services were provided, and shall be signed and certified by Benefield Richters as to its accuracy. The City will pay all undisputed invoices within thirty (30) days of receipt. Payment for services rendered does not indicate the City's acceptance of such services as being fully in accord with all the provisions of this Agreement.
- 2.3 CHANGES IN CONTRACT PRICE. The contract price may be changed only by a Change Order. The value of any work covered by a Change Order of any claim for increase or decrease in the contract price shall be determined by the actual cost for the materials, supplies, equipment, profit, and other services necessary to complete the work.
- 2.5 CHANGES IN SCOPE OF WORK. The City may at any time, if the need arises, order changes within the scope of the work without invalidating this Agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by Change Order. All Change Orders must be approved by the City and Benefield Richters.
- 2.6 NOTICES. Invoices, notices and communications concerning this Agreement will be directed to the following representatives:

City of Knoxville:
Boyce Evans, Purchasing Agent
P.O. Box 1631
Knoxville, TN 37901
(865) 215-2070

Benefield Richters Company, Inc.
Glenn Richters, Principal
516 Union Avenue
Knoxville, TN 37902
(865) 637-7009

Notices shall be in writing and shall be effective when actually delivered in person, received via facsimile transmission, or private carrier with signature confirmation, or when

received in the U.S. Mail, certified with return receipt requested, postage pre-paid and addressed to the party as stated above.

ARTICLE 3. TERMINATION

The City may terminate this Agreement at any time, with or without cause, by written notice of termination to Benefield Richters. If the City terminates this Agreement, and such termination is not a result of a default by Benefield Richters, Benefield Richters shall be entitled to receive as its sole and exclusive remedy the following amounts from the City, and the City shall have no further or other obligations to Benefield Richters: (a) The amount due to Benefield Richters for work executed through the date of termination, not including any future fees, profits, or other compensation or payments which Benefield Richters would have been entitled to receive if the Project had not been terminated; and (b) the direct out-of-pocket costs incurred by Benefield Richters for demobilization of the Project following receipt of the notice of termination, not to exceed the amount reasonably and actually required to demobilize the Project.

The City may, by written notice of default to Benefield Richters, terminate the whole or any part of this contract if Benefield Richters fails to make delivery of the supplies or to perform the services wherein the time specified herein or any extension thereof; or if Benefield Richters fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Purchasing Agent may authorize in writing) after receipt of notice from the Purchasing Agent specifying such failure.

If the contract is terminated in whole or in part for default, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies of services similar to those so terminated.

If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that Benefield Richters was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of the City.

ARTICLE 4. HOLD HARMLESS AND INDEMNIFICATION

Benefield Richters shall indemnify, defend, save and hold harmless the City, its employees, agents, and officers, of and from suits, claims, actions, damages, and expenses, including reasonable attorney's fees, to the extent caused by the negligent acts, errors, omissions of the firm, and/or its agents, employees, officers, directors, consultants, subcontractors and suppliers ("Indemnified Claim").

Benefield Richters shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action involving an Indemnified Claim upon written notice and demand

for same by the City. Benefield Richters will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as Benefield Richters may request. Benefield Richters will not consent to the entry of any judgment or enter into any settlement with respect to an Indemnified Claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against an Indemnified Claim with counsel of its choice at its own expense.

Benefield Richters shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against the City with respect to any Indemnified Claim.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

ARTICLE 5. INSURANCE

Benefield Richters shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better.

1. ***Commercial General and Umbrella Liability Insurance***; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

- a. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Benefield Richters including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.
- b. For any claims related to this project, Benefield Richters's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Benefield Richters's insurance and shall not contribute with it.

- c. At the sole discretion of the City, dedicated limits of liability for this specific project may be required.
- 2. ***Automobile Liability Insurance***; including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Benefield Richters.
- 3. ***Workers' Compensation Insurance***. Benefield Richters shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Benefield Richters shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Benefield Richters's workers' compensation insurance coverage.
- 4. ***Other Insurance Requirements***. Benefield Richters shall:
 - a. Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the City Attorney of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.
 - b. Upon the City's request, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsement(s), proof of such policy wording or endorsement(s) will be required.
 - c. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
 - d. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.
 - e. If Benefield Richters cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Benefield Richters may, in the alternative, place such

insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.

- f. Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by Benefield Richters's insurance) in the same manner as specified for Benefield Richters. Benefield Richters shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.

Large Deductibles; Self-Insured Retentions. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.

Waiver of Subrogation Required. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Benefield Richters for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.

Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the Risk Manager and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.

ARTICLE 6. NON-DISCRIMINATION

Benefield Richters hereby agrees that it:

- A. Will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, familial status or national origin;
- B. Will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, age, disability or familial status or national origin;
- C. Will in all solicitations or advertisements for employees placed by or on behalf of itself, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, disability, familial status or national origin;

- D. Will include these provisions in every subcontract or sublease let by or for it;

ARTICLE 7. ETHICAL STANDARDS

Benefield Richters hereby takes notice of and affirms that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

(A) Sec. 2-1048. Conflict of Interest.

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefor, where to the employee's knowledge there is a financial interest possessed by:

- (1) The employee or the employee's immediate family;
- (2) A business other than a public agency in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
- (3) Any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

(B) Sec. 2-1049. Receipt of Benefits from City Contracts by Councilmembers, Employees and Officers of the City.

It shall be unlawful for any member of council, member of the board of education, officer or employee of the city to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work or service for the city in which any member of council, member of the board of education, officer or employee has or holds any such interest is void.

(C) Sec. 2-1050. Gratuities and Kickbacks Prohibited.

Gratuities. It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

- (1) An official action taken, or to be taken, or which could be taken;
 - (2) A legal duty performed, or to be performed, or which could be performed;
- or

- (3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(D) Sec. 2-1051. Covenant Relating to Contingent Fees.

(a) *Representation of Contractors.* Every person, before being awarded a contract in excess of ten thousand dollars (\$10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) *Intentional violation unlawful.* The intentional violation of the representation specified in subsection (a) of this section is unlawful.

(E) Sec. 2-1052. Restrictions on Employment of Present and Former City Employees.

Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

- (1) Oral or written warnings or reprimands;
- (2) Cancellation of transactions; and
- (3) Suspension or debarment from being a Contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a Contractor or subcontractor under a city contract.

ARTICLE 8. ADA COMPLIANCE

With regard to the services performed under this Agreement, Benefield Richters will comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"). Benefield Richters agrees that it will defend, indemnify and hold the City

harmless against any and all claims, demands, suits or causes of action which arise out of any negligent and/or intentional act or omission by Benefield Richters, its employees, agents or representatives that violates the ADA. Benefield Richters agrees that the City will not be responsible for any costs or expenses arising from Benefield Richters's failure to comply with the ADA.

ARTICLE 9. MISCELLANEOUS PROVISIONS

- 9.1 INDEPENDENT CONTRACTOR. Benefield Richters shall perform all obligations under this Agreement as an independent contractor; neither it nor its employees shall be considered employees, partners or agents of the City, nor shall it or its employees be entitled to any benefits, insurance, pension, or workers' compensation as an employee of the City.
- 9.2 ASSIGNMENT. Benefield Richters shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of the City.
- 9.3 SUBCONTRACTS TO THE AGREEMENT. Benefield Richters shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.
- 9.4 WRITTEN AMENDMENTS. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.
- 9.5 REQUIRED APPROVALS. Neither Benefield Richters nor the City is bound by this Agreement until it is approved by the appropriate officials shown on the signature page of this Agreement.
- 9.6 ARTICLE CAPTIONS. The captions appearing in this Agreement are for convenience only and are not a part of this Agreement; they do not in any way limit or amplify the provisions of this Agreement.
- 9.7 SEVERABILITY. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.
- 9.8 FEDERAL, STATE AND LOCAL REQUIREMENTS. Benefield Richters is responsible for full compliance with all applicable federal, state, and local laws, rules and regulations.
- 9.9 NO BENEFIT FOR THIRD PARTIES. The services to be performed by Benefield Richters pursuant to this agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to this Agreement. No such person or entity

shall be entitled to rely on Benefield Richters's performance of its services hereunder, and no right to assert a claim against the City or Benefield Richters, its officers, employees, agents or Benefield Richters shall accrue to Benefield Richters or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety or any other third party as a result of this Agreement or the performance or non-performance of Benefield Richters's services hereunder.

- 9.10 NON-RELIANCE OF PARTIES. Parties explicitly agree that they have **not** relied upon any earlier or outside representations other than what has been included in this Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.
- 9.11 FORCE MAJEURE. Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 9.12 EEO/AA. The City of Knoxville is an EEO/AA/Title VI/Section 504/ ADA/ADEA Employer.
- 9.13 GOVERNING LAW AND VENUE. This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee. Any action for breach of this Agreement or to enforce or nullify any provision of this agreement shall be instituted only in a court of appropriate jurisdiction in Knox County, Tennessee.
- 9.14 ENTIRE AGREEMENT. This Agreement forms the entire Agreement between the City and Benefield Richters. Any prior representations, promises, agreements, oral or otherwise, between the parties, which are not embodied in this writing, shall be of no force or effect.

IN WITNESS WHEREOF, the City and Benefield Richters have executed this Agreement in two (2) copies as of the below-written date.

APPROVED AS TO FORM:

CITY OF KNOXVILLE

CHARLES W. SWANSON
LAW DIRECTOR

BY: _____
MADELINE ROGERO
MAYOR

FUNDS CERTIFIED:

BENEFIELD RICHTERS CO., INC.

JAMES YORK
FINANCE DIRECTOR

BY: _____
TITLE: _____

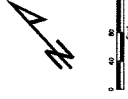
Required Documents:

Certificate of Insurance X

Document to be attached:

Exhibit A – Map of Tennova St. Mary’s Facilities

Exhibit B – Proposal and Fee Schedule submitted by Benefield Richters dated August 24, 2018



MAP DATA TAKEN FROM
AERIAL SURVEY OF KNOXVILLE
AND KNOX COUNTY. THIS MAP IS
INTENDED TO MEET NATIONAL MAP
ACCURACY STANDARDS AT THE
COMPIATION SCALE

DISCUSSION

[illegible]

Date	Tech.	Version
9/13/2016	DRR	1



August 24, 2018

David Brace
City of Knoxville
City-County Building
400 Main Street
Kingsport, Tennessee 37902

Re: City of Knoxville, Tennova St. Mary's Facilities Assessment

David,

Thank you very much for inviting us to work with you on this project. We look forward to another successful collaboration. Hopefully, the results for the city will be as positive as our previous efforts have turned out.

Based on our discussions, we have developed the following scope and fee proposal for your consideration.

Scope of Work

The purpose of this study is to evaluate the existing Tennova St. Mary's facility for the purposes of helping the City of Knoxville determine the potential opportunities of, appropriateness for and associated costs involved with acquiring the property. The study will focus specifically on relocating the Knoxville Fire Department, Knoxville Police Department, and the City Courts.

In order to do this, we would:

1. Evaluate the existing St. Mary facilities.
2. Develop and/or revise the program of needs for the three City departments under consideration.
3. Compare and evaluate the fit between the program and the existing facilities.
4. Develop broad based project costs for developing the facilities, including demolition infrastructure improvements, and new construction.

1. Site Analysis and Data Gathering

During this initial phase we will create an inventory of the buildings and spaces available. We will determine the number of floors, total gross and usable square footage, and the general characteristics of the areas.

We will then collect data and analyze the conditions of the existing facilities in order to determine potential opportunities and limitations. Among the items that will be identified will be:

- existing site conditions, including circulation and traffic
- utility connections and infrastructure legal constraints (property boundaries, easements, and zoning)
- physical condition of facilities (visual inspection of exterior envelope, structural systems, interior layout and finishes, etc.)
- physical condition of mechanical and electrical systems.

Benefield Richters will rely on Tennova and the City of Knoxville to provide as-built drawings of facilities, as well as documentation on equipment and systems essential to building operations. Should drawings be unavailable for a current facility, the Benefield Richters team is able to create as-built drawings as an additional service.

2. Programming

We will review, revise and expand upon existing programming developed by the three individual City groups under consideration.

Work will include meeting with representatives of the departments, reviewing present and future needs, and touring existing facilities.

The result of this step will be a program that defines the type of spaces needed for the various functions and activities of each department. This will include identifying the number of users, general characteristics, unique requirements of space, as well as required proximity to other functions.

3. Testing

Upon completion of the first two steps, we will test the program against the existing facilities to determine possible solutions to locating the City facilities within the St. Mary's campus.

The result of this step will be space diagrams indicating general areas of program function within the footprint of the existing facilities.

4. Opinion of Probable Cost

We will help establish ballpark budget estimates for each of the elements of work, including demolition, site preparation, and building renovation. Estimates will be based on square footage costs and other general ballpark estimating practices.

Schedule

We understand that time is of the essence and initial feedback is desired within 30 days, while the entire process may extend up to 3 months. We are prepared to begin work immediately.

Fees

We propose that the basis for compensation for this work will be hourly, based on our 2018 rates noted below, as follows:

hourly, total fee not to exceed	\$50,000
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Additional services will not be performed without written authorization, at the following rates:

Principal Architect	\$150/hr
Architect	\$100/hr
Senior Associate Architect	\$ 90/hr
Associate Architect	\$ 75/hr

Reimbursable expenses

Reimbursable expenses not included in this fee shall be charged at a rate of 1.15 times cost and shall include mileage and related costs for out of town travel, printing for other than in-house use, governmental fees, etc.

Mileage will be reimbursed at a rate of \$0.50/mi.

Professional services outside of those provided by the Benefield Richters Company, including civil, structural, mechanical and electrical engineering or material and systems testing, have been excluded from this proposal. If deemed necessary they will be provided as an additional service and the fees will be passed on without markup.

Payment

Invoices will be submitted monthly and upon completion of the work. Payment is requested within 30 days of date of invoice. Payments after 30 days shall be subject to interest of 1.5% per month.

Limits of Liability

Total liability of the Benefield Richters Company for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this agreement, shall not exceed the amount of this agreement.

Termination of Agreement

Either party may cancel this agreement at any time, for any reason. In such case, only the work performed through the time of cancellation will be charged.

Acceptance

If this proposal is acceptable to you, we will enter into a contract with the City accordingly.

Thank you again for the opportunity to work with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Richters", written in a cursive style.

Glenn Richters, RA & LEED AP